

<b>WALTER K. JOHNSON,</b>	)	<b>Davidson Chancery</b>
	)	<b>No. 96-3153-III</b>
<b>Plaintiff/Appellant,</b>	)	
	)	
<b>VS.</b>	)	
	)	
<b>TENNESSEE DEPARTMENT OF</b>	)	
<b>CORRECTIONS,</b>	)	<b>Appeal No.</b>
	)	<b>01A01-9710-CH-00586</b>
<b>Defendant/Appellee.</b>	)	

<p><b>FILED</b></p> <p><b>September 23, 1998</b></p> <p><b>Cecil W. Crowson</b> Appellate Court Clerk</p>
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**IN THE COURT OF APPEALS OF TENNESSEE  
MIDDLE SECTION AT NASHVILLE**

**APPEAL FROM THE CHANCERY COURT OF DAVIDSON COUNTY  
AT NASHVILLE, TENNESSEE**

**HONORABLE ELLEN HOBBS LYLE, CHANCELLOR**

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**AFFIRMED AND REMANDED.**

HENRY F. TODD  
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:  
WILLIAM C. KOCH, JR., JUDGE

CONCURS IN SEPARATE OPINION:  
BEN H. CANTRELL, JUDGE

<b>WALTER K. JOHNSON,</b>	)	<b>Davidson Chancery</b>
	)	<b>No. 96-3153-III</b>
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<b>Defendant/Appellee.</b>	)	

**OPINION**

The captioned petitioner, a prisoner in the custody of the Tennessee Department of correction, has appealed from the judgment of the Trial Court dismissing his “Petition for a Declaratory Judgment”, which is, in reality an action seeking review of an administrative decision of the Department regarding sentence credits. The grounds of the dismissal were twofold:

1. Application for judicial review was not filed within 60 days after final action of the administrative agency as required by T.C.A. § 4-5-322(b)(1), and
  
2. Failure to state a claim for which relief can be granted because the “sentence credits” sought by petitioner are not matters of right but of discretion by the administrative authorities. T.C.A. § 41-21-236(a)(2) and (3).

The petition was filed in the Trial Court on October 7, 1996. It does not specify the date on which the Department made a declaratory ruling or refused to do so.

The petition exhibits two letters from the department which are relevant to the timeliness of the petition to the Trial Court. The first is dated April 3, 1996, denying a declaratory order. The second, dated August 5, 1996, responds to a second request for declaratory order by referring to the April 3, 1996 letter.

It is clear that more than 60 days elapsed from April 3, 1996 to October 7, 1996.

The Trial Court has no jurisdiction to consider any application for relief from an administrative decision unless the application for relief is filed with the Trial Court within 60 days after the date of the administrative action from which relief is sought. T.C.A. § 4-5-322.

In the absence of a motion for re-consideration, the administrative agency has no power to extend the time for application for judicial review by reiterating its former action.

Absent jurisdiction of the Trial Court, to address the merits of the application, this Court has no jurisdiction to review the rulings of the Trial Court upon the merits of the controversy.

The judgment of the Trial Court is affirmed. Costs of this appeal are taxed to the appellant. The Trial Court deferred the payment of Trial Courts costs and tax until disposition of the appeal. The cause is remanded to the Trial Court for entry and enforcement of its judgment against the petitioner for trial court costs and litigation tax.

**AFFIRMED AND REMANDED.**

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HENRY F. TODD  
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

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WILLIAM C. KOCH, JR., JUDGE

CONCURS IN SEPARATE OPINION:  
BEN H. CANTRELL, JUDGE

